

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:14-CR-00276-1
	:	
v.	:	
	:	Date: February 4, 2016
MICHAEL E. BURDETTE,	:	
	:	
Defendant.	:	
	x	

TRANSCRIPT OF SENTENCING HEARING HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Government: AUSA PHILIP H. WRIGHT
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Probation Officer: Matthew Lambert

Court Reporter: Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E. Johnston,
2 Judge, United States District Court, Southern District of West
3 Virginia, in Charleston, West Virginia, on February 4, 2016, at
4 2:35 p.m., as follows:

5 COURTROOM DEPUTY CLERK: The matter before the Court is
6 the United States of America versus Michael Burdette, criminal
7 action number 2:14-cr-00276, scheduled for sentencing.

8 THE COURT: Good afternoon. Will counsel please note
9 their appearances?

10 MR. WRIGHT: Good afternoon, Your Honor. Philip Wright
11 and Eric Baca on behalf of the United States.

12 MS. ROBINSON: Susan Robinson on behalf of the
13 defendant, Michael Burdette, who is present in court, Your Honor.

14 THE COURT: Good afternoon.

15 Mr. Burdette, will you please stand, and I will ask the
16 deputy clerk to administer an oath to you at this time.

17 COURTROOM DEPUTY CLERK: Please raise your right hand.

18 **MICHAEL BURDETTE, DEFENDANT, SWORN**

19 THE COURT: You may be seated.

20 Mr. Burdette, do you understand that you are now under oath
21 and you must tell the truth and, if you testify falsely, you may
22 face prosecution for perjury or for making a false statement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You may remain seated unless I indicate
25 otherwise. You might just want to pull that microphone a little

1 closer to you there.

2 Throughout the course of this hearing, if there's anything
3 that occurs that you don't understand, I want you to feel free to
4 speak up and seek clarification.

5 Also, if at any time you need to confer with your attorney,
6 I'll be pleased to pause the proceedings to allow you to do so.

7 Do you understand all that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Ms. Robinson, have you received and read
10 and reviewed with your client the most recent edition of the
11 Presentence Report? The financial information was modified
12 slightly here in the last day or so.

13 MS. ROBINSON: Yes, Your Honor. We've received the
14 Presentence Report, and both addendums, and I've reviewed both of
15 them with my client.

16 THE COURT: All right. Very well.

17 Just so I'm clear, Mr. Lambert, the change you made in the
18 defendant's financial calculation was basically a math change.
19 The assets and liabilities remain the same, but the net worth
20 calculation -- the net worth itself changed slightly; is that
21 correct?

22 PROBATION OFFICER LAMBERT: That's correct, Your Honor.

23 THE COURT: All right. Very well.

24 Mr. Burdette, have you received and read and reviewed with
25 your counsel a copy of the most recent edition of the Presentence

1 Report?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Has the Government received and reviewed a
4 copy of the report?

5 MR. WRIGHT: Yes, Your Honor.

6 THE COURT: All right. Ms. Robinson, do you have any
7 live objections remaining?

8 MS. ROBINSON: No, Your Honor.

9 THE COURT: All right. The ones that were asserted
10 then, I will view then as either withdrawn or moot.

11 The parties have responded with regard to the issue of
12 sealing materials. I think the only real issue was the
13 sentencing memo. Has that been changed now in the record? Has a
14 new sentencing memo been filed?

15 MS. ROBINSON: Yes. A redacted version of the
16 sentencing memorandum, as well as a redacted version of the
17 letters that were sent to the Court on behalf of Mr. Burdette,
18 have been filed as of yesterday and are public record.

19 THE COURT: And the medical records remain sealed?

20 MS. ROBINSON: Correct. And all other exhibits were
21 unsealed following the Court's order.

22 THE COURT: All right. Very well.

23 Are we all squared away on sealed documents in this case?

24 MR. WRIGHT: Yes, Your Honor.

25 THE COURT: As far as we know?

1 MS. ROBINSON: Yes, Your Honor.

2 THE COURT: All right. Very well.

3 All right. Then, subject to the addenda -- oh, and, as I've
4 indicated in prior hearings, I'm going to apply a plus-four for
5 the discharge, instead of a plus-six. That is without prejudice
6 to the Government arguing that point in subsequent defendants'
7 hearings, but that's how I'm going to apply it today. So, I will
8 ask the probation officer to prepare an addendum to the
9 Presentence Report reflecting that. Subject to that, I will
10 adopt the Presentence Report.

11 I would note that I did receive a sentencing memorandum from
12 the defendant. That included several attachments with regard to
13 -- I read the letters and they're already in the record. Those
14 are attached, as well. They're already in the record, as
15 redacted. I would note that there were several pages of medical
16 records. I didn't read through all of those because it got
17 pretty technical, but I did read the letter and I understand the
18 general import of that information.

19 Also, I would note for the record that some materials were
20 submitted from potential victims and were included in the docket
21 -- on the docket of Mr. Reynold's sentencing hearing and case --
22 and, unless somebody sees some reason to do so, I don't intend to
23 put them on the docket of this case. Is there any objection to
24 that?

25 MR. WRIGHT: No, Your Honor.

1 MS. ROBINSON: No, Your Honor.

2 THE COURT: All right. And, while I'm thinking about
3 it, Mr. Wright, so I don't do like I did in the last hearing and
4 forget, I'll ask you now, have the -- with regard to any
5 potential victims, have their rights and notifications been
6 afforded to them under the victims rights statutes and
7 regulations?

8 MR. WRIGHT: Yes, Your Honor. And, as I indicated in
9 the hearing that we just concluded, but for the record in this
10 case, I did receive a notification from a Maya Nye, who asked
11 that the letters that she has previously submitted to the Court
12 be read in open court so that the defendants could hear it, and
13 I'm passing on that request. As far as I know, Ms. Nye is not in
14 the courtroom and no one has notified me that they would like to
15 speak to the Court.

16 THE COURT: Very well. And I will turn that request
17 down. It's noted, but I will turn that request down for the
18 reasons I've previously stated.

19 Thank you, Mr. Wright.

20 On March 18th, 2015, the defendant appeared before this
21 Court and entered a plea of guilty to a single-count information
22 charging him with negligent discharge of a pollutant in violation
23 of 33 U. S. C. 1319(c)(1)(A) and 1311. I deferred a factual
24 basis finding at that time.

25 The one thing I want to note for the record, and I mentioned

1 this very topic in the Reynolds sentencing hearing and, Ms.
2 Robinson, I note, was here for that proceeding, and that has to
3 do with causation. The -- as I have read through these reports,
4 I have learned that -- well, and I'll talk about this more later.
5 This defendant, in particular, was seeking repairs to the dike
6 wall, but I would note, and this is really, I think, the
7 foundation of this -- to me, this is the foundation of this
8 prosecution in this particular case, he went about that the wrong
9 way. He should have followed the permit, should have put into
10 place, or directed that -- or led the effort to put into place a
11 Stormwater Protection Plan and a Groundwater -- I'm sorry, a
12 Stormwater Pollution Prevention Plan and a Groundwater Protection
13 Plan. Had that occurred, there would have been a number of
14 things that would have been formalized and made a part of the
15 workplace and the operation of the company, including
16 inspections, training, a committee, all of which would likely
17 have generated documentation.

18 The record indicates -- the Presentence Report indicates that
19 this defendant requested at least some repairs to the dike wall
20 and that never came about from higher-ups in management, but I
21 believe that if those -- if the plans had been put into place, it
22 would have, within the institution of the company, made a much
23 stronger case, maybe an overwhelming case for the repairs to be
24 made, especially given that if you're going to inspect this
25 thing, it's going to create documents, and evidence, and I think

1 pressure to bring about these repairs.

2 I don't -- I think it's impossible, since none of this ever
3 happened, to know for sure that it's inevitable that those
4 repairs would have been made if this had been followed, but I
5 think it would have been much more likely, and we know the result
6 without the plans -- nothing happened, and this incident
7 occurred. So, that is -- in recognition that this defendant did
8 not have full control of the pursestrings; but, nonetheless,
9 there's much he could have done to bring back -- to bring about
10 the repairs that were necessary, and I think it is much more
11 likely that would have occurred if this defendant had followed
12 the permit and made sure that he did everything he could to put
13 these plans in place and carry them out as far as he possibly
14 could.

15 So, is there any -- those are the inferences I draw from all
16 of this. Is there any objection to that, Ms. Robinson?

17 MS. ROBINSON: No, Your Honor, there's not. In fact,
18 it's much like my analysis as I was considering the facts and
19 evidence in this case and advising my client.

20 THE COURT: And, Mr. Burdette, do you agree with what
21 I've said?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. Very well. Based on that then,
24 I will find a factual basis, and I will adjudge the defendant
25 guilty of the crime to which he has pled guilty, and will accept

1 the plea agreement that was previously filed.

2 Next, I note, Mr. Wright, that you have indicated that you
3 intend to make a motion pursuant to 5K1.1. You have, as has been
4 your custom in these cases, provided my chambers with a
5 memorandum in support of such a motion, but have not filed it on
6 the docket. I will first ask, is there any reason for us to hear
7 that motion in-camera?

8 MR. WRIGHT: No, Your Honor.

9 THE COURT: And is there any reason not to go ahead
10 then and place that memorandum on the docket?

11 MR. WRIGHT: No, Your Honor.

12 THE COURT: All right. Is there any objection to that?

13 MS. ROBINSON: No, Your Honor.

14 THE COURT: All right. That will be so ordered.

15 I have read that memorandum, Mr. Wright, but I will -- well,
16 let me go ahead and do this. I will lay out the standard and
17 then I'll let you make your motion and any comments that you
18 have.

19 Pursuant to 5K1.1 of the sentencing guidelines, the Court
20 may depart from the guidelines upon motion of the Government
21 stating that the defendant has provided substantial assistance in
22 the investigation and prosecution of another person.

23 In determining the appropriate reduction, the Court may
24 consider the significance and usefulness of the defendant's
25 assistance; the truthful, completeness, and reliability of any

1 information or testimony provided by the defendant; the nature
2 and extent of the defendant's assistance; any injuries suffered
3 or any danger or risk of injury to the defendant or his family
4 resulting from his assistance; and the timeliness of the
5 defendant's assistance.

6 Give me just a moment, please.

7 (Pause.)

8 THE COURT: All right. Mr. Wright, I'll hear from you
9 now.

10 MR. WRIGHT: Your Honor, as so indicated in that
11 memorandum, we do hereby file a motion pursuant to Section 5K1.1
12 of the sentencing guidelines to reflect the substantial
13 assistance that Mr. Burdette provided. I won't go through every
14 single one of those in detail, but I will say that his assistance
15 was significant.

16 And, if it's not plainly stated in that memorandum, I will
17 state that he was the most helpful cooperator that we had. He
18 participated in a lengthy debriefing session, provided testimony,
19 and made himself available on short notice to answer questions.

20 Significantly, he also provided us with records, his notes
21 that he took that were more or less a daily log of his activities
22 that provided us key insights, corroborated much of the
23 information that he gave to us and, indeed, we would have
24 attempted to introduce some of those notes as exhibits.

25 He was the second defendant to agree to cooperate and was,

1 thus, I would say, very helpful, almost critical to our remaining
2 charges against the remaining defendants with the indictment that
3 followed within a month and a half of his first agreeing to sign
4 the plea agreement, and it is for those reasons, and the reasons
5 that I have stated in the memo, that the United States recommends
6 that the Court depart from the guideline offense level, which we
7 believe is 12 months in this case, or sentence, the guideline
8 sentence, to Level 8 in the sentencing guideline range.

9 THE COURT: All right. I will adopt -- well, Ms.
10 Robinson, do you have anything to add?

11 MS. ROBINSON: No, Your Honor.

12 THE COURT: I will adopt the comments of the Government
13 both in their written and oral presentation.

14 I would note that, in reading this file, it's obvious that
15 the defendant is a note taker and took very detailed notes of
16 what was happening on a regular basis, and I can imagine how
17 helpful that was to the Government. That's not something that
18 comes along every day in every case, and I can imagine that that
19 would have been extremely helpful to understanding the case, and
20 understanding what happened, and building the case as the
21 prosecution went forward. So, I will grant the motion and depart
22 down to a Level 8 as has -- as the Government has suggested in
23 the motion.

24 I'm now ready to give my tentative findings as to the
25 applicable guidelines.

1 First, Mr. Wright, is there a motion for the third level for
2 acceptance of responsibility?

3 MR. WRIGHT: There is, Your Honor.

4 THE COURT: The motion will be granted. Therefore, I
5 find a Base Offense Level of VI; plus 4 for the discharge; plus 4
6 for the disruption of public utility; plus 4 for discharge in
7 violation of permit, for an Adjusted Offense Level of 18, minus 3
8 for acceptance of responsibility, for a Total Offense Level of
9 15; a Criminal History Category of I based on 0 criminal history
10 points, otherwise yielding an imprisonment range of 18 to
11 24 months, but that is capped at 12 months because of the
12 statutory maximum and, therefore, that is the guideline range.

13 Then, with regard -- after the application of the 5K
14 reduction, I find a Total Offense Level of 8, a Criminal History
15 Category of I, yielding an imprisonment range of 0 to 6 months,
16 which is in Zone A, which allows for straight probation; 1 to
17 5 years of probation; 1 year of supervised release, if
18 imprisonment were imposed; and a fine range of \$2,500.00 to
19 \$100,000.00; and a mandatory special assessment of \$2,500 -- or
20 \$25.00. \$25.00, which I note has already been paid.

21 Is that correct, Ms. Robinson?

22 MS. ROBINSON: That is correct, Your Honor.

23 THE COURT: All right. And no restitution.

24 Is there any legal objections to my tentative findings as to
25 the applicable guidelines?

1 MR. WRIGHT: No, Your Honor.

2 MS. ROBINSON: No, Your Honor.

3 THE COURT: All right. Mr. Burdette, at this time, the
4 Federal Rules of Criminal Procedure give you the right to make
5 any statement that you would like to make, although you're not
6 obligated to make any statement. However, if you do choose to
7 make a statement, I would ask that you stand to do so.

8 You may want to pull that up. Yeah, there you go.

9 THE DEFENDANT: Thank you, Your Honor. I would first
10 like to apologize to the citizens of West Virginia, to my family
11 and friends, and to all those affected by the Freedom spill.

12 From the beginning of my employment with Freedom Industries,
13 I tried to bring my experience with capital projects and
14 maintenance programs to the corporation to help them maintain
15 their facilities in a reliable manner. When I later took the
16 position of the plant manager, I did not fully appreciate the
17 environmental compliance and regulatory issues and I take
18 responsibility for my role in not -- in failing to see that the
19 company was in full compliance with those permits.

20 I was very excited when Freedom Industries was purchased by
21 Roosevelt Mining, as the projects that I had on the books for
22 years were finally going to be implemented, but everything
23 changed on January the 9th of 2014, and my focus changed from
24 future projects to working with various state and federal
25 agencies and contractors through the bankruptcy CRO to ensure

1 that the remediation work and containment of site stormwater
2 occurred in a safe and deliberate manner. I worked countless
3 hours until July of 2014 to address the issues. I was born in
4 South Charleston, West Virginia, and my family and friends live
5 downstream of this event, and I did what I could do to help bring
6 this event to a successful conclusion.

7 Thank you, Your Honor, for allowing me to speak before the
8 Court, and the people of West Virginia, and my family and
9 friends, as well.

10 I have learned some valuable life lessons at a significant
11 personal cost and, while I do not know what the future holds, I
12 know that I will never work for a company that does not put
13 people, the environment, and the assets above profits. Thank
14 you.

15 THE COURT: Thank you, sir. You may be seated.

16 Ms. Robinson, anything else to add on behalf of the
17 defendant?

18 MS. ROBINSON: Your Honor, I know the Court has
19 received letters from Mr. Burdette's colleagues, as well as his
20 family members. I began representing him within a week or two of
21 the Freedom spill and, over the last two years, I've come to find
22 everything that's been said in those letters to the Court about
23 Mike's character to be true. He's been unfailingly honest with
24 me. He has demonstrated -- and, from everything I've learned, he
25 has been a hard worker his entire life. He has been diligent.

1 He's earned the respect of everyone that he's worked with.

2 Unfortunately, he did accept a position without having
3 clearly defined responsibilities with a company that wasn't --
4 you know, wasn't operated appropriately in compliance with the
5 environmental laws, and he did so without full appreciation of
6 his responsibility to comply with the environmental regulations
7 and to ensure that the plant was in full compliance. I don't
8 have any doubt in my mind that Mike, had he opened up the files,
9 had he appreciated what his role was, that he would have done
10 everything within his power to see that the plant was in
11 compliance.

12 As it was, he, from his engineering background and from his
13 standpoint of a responsible -- a responsible operator of a
14 facility and a plant manager, did what he could to have repairs
15 made where there could be repairs made within the financial
16 ability and constraints that were imposed upon him by the
17 company. This is not a crime that Mike committed for profit. He
18 had no motive to save costs for the company. And none of his
19 actions or inactions were governed by that type of motivation on
20 his part.

21 As Mr. Wright has said, he has provided -- you know, since
22 that time, he worked hard to help with the remediation project.
23 He came in early, pled guilty to an information. He has provided
24 Mr. Wright with the notes and records that he kept throughout his
25 entire career that he continued to keep during Freedom and, you

1 know, those notes and records, if you read them, they will not
2 show you an individual who is trying to hide activities or what
3 was being done. He wrote down everything that was being done.

4 His crime was one of omission. It's a serious crime, and he
5 recognizes that, but he's done what he can to help the
6 Government. He has been instrumental. I mean, if you read the
7 pleadings that the Government filed shortly after he came in, you
8 could tell that the indictment was crafted a lot on what Mr.
9 Burdette had to say.

10 He's been financially devastated by the spill. He does not
11 have a job. He's not employed. Perhaps the stigma of even
12 working for Freedom during this crisis will prevent him from
13 obtaining employment in his field here in the State of West
14 Virginia.

15 You know, his age, his health, all of those factors are
16 factors that, you know, I hope the Court will fully take into
17 consideration in imposing sentence, and I would ask that the
18 Court, given his role, he's not an owner of this company. He
19 didn't have a financial motive. He came in. He cooperated.
20 He's done what he can do. Given his role, I would ask the Court
21 to impose a minimum fine, due to his financial resources, as well
22 as a minimum term of probation. Thank you.

23 THE COURT: Mr. Wright?

24 MR. WRIGHT: Your Honor, Mr. Burdette is charged with
25 and he has pled guilty to negligence. We have no evidence to

1 believe that he knowingly -- or any of the individual defendants
2 knowingly and intentionally violated any environmental law. It
3 was, nonetheless, an offense with great consequences, causing a
4 significant public disruption. That gravity, the gravity of that
5 offense, must, of course, be balanced against or by his
6 cooperation and assistance which, as I indicated to the Court,
7 was very, very significant; in fact, critical. So, weighing
8 those factors, Your Honor, it is our position that a sentence
9 imposed in accordance with the statute and pursuant to a
10 Guideline Level 8 would be appropriate.

11 THE COURT: Thank you, Mr. Wright.

12 I'm going to take a brief break to review my notes and I'll
13 be back to impose sentence.

14 (Recess taken.)

15 THE COURT: All right. After consideration of the
16 advisory guidelines and the other applicable factors under
17 Section 3553(a), I am now ready to impose sentence.

18 Will the defendant please stand?

19 Mr. Burdette, to be sure, the "Water Crisis", as it has come
20 to be known, was a traumatic event for the communities in the
21 area whose water service was impacted. It was appalling to think
22 that such a contamination of something so basic, yet essential as
23 drinking water, could happen in this day and age with all the
24 environmental regulation and awareness that now exists.

25 This event, now two years past, clearly had a disruptive

1 effect on people's lives and, perhaps worse yet, on their trust
2 in the safety of the water coming from their taps.

3 But the crisis passed. We have no reason to believe that
4 problems related to the Water Crisis linger in our taps, and I
5 have no evidence before me that MCHM, while perhaps an immediate
6 irritant, represents a long-term health threat to anyone.

7 As I've said before, I've struggled with the sentencing
8 decision in these cases as much or more than I have in any other
9 case. There are multiple facets of these cases that tend to pull
10 the sentencing decisions in different directions.

11 While there's no doubt that causing a discharge of a
12 pollutant chemical into the water supply is a serious, a very
13 serious offense requiring a just punishment, I cannot ignore the
14 fact that these charges for all the individual defendants,
15 including you, are misdemeanors and not based upon intentional
16 conduct but, at most, negligence -- carelessness, in layman's
17 terms. This is a major consideration in these sentencing
18 decisions, including yours.

19 We handle few misdemeanors in federal court. Of the
20 hundreds of criminal cases over which I've presided in nearly ten
21 years, I would guess that less than ten have been misdemeanors
22 before now. Of those, I can only recall one, a political
23 corruption case with no 5K motion, in which I gave prison time.

24 In the eyes of the legal system, a misdemeanor charge limits
25 the seriousness of the crime and must necessarily limit the

1 punishment, as well. The federal sentencing guidelines recognize
2 this distinction specifically in relation to these very crimes.
3 The guideline calculation which governs these cases is based by
4 the explicit terms of the guidelines themselves on knowing and,
5 therefore, intentional misconduct.

6 If the evidence, the evidence, and charges against these
7 defendants had reflected intentional misconduct, they would
8 likely be facing relatively lengthy prison terms the guidelines
9 would otherwise call for. However, since they're misdemeanors
10 and not based on knowing conduct, the guidelines suggest a
11 downward departure. The problem for me is they don't recommend
12 how much of a departure should be considered. Thus, the
13 guidelines are of little use in fashioning a sentence in this
14 case.

15 It's likewise difficult to find information on prior
16 sentencings in Clean Water Act and Refuse Act misdemeanor cases
17 to use as a starting point for a sentencing decision; although, I
18 will say, your counsel helpfully pointed out statistics from the
19 United States Sentencing Commission which showed that nationwide,
20 a large percentage of environmental cases get probation. These
21 statistics make no distinction between felonies and misdemeanors,
22 so they can be read to include both, which suggests the
23 percentage of probation for misdemeanors would be even higher.

24 You're hardly a criminal. You have no criminal history and
25 you've been a working engineer most of your life. You do not

1 possess -- you don't pose a further threat to the public and I
2 find little need to deter you from further crime with this
3 sentence.

4 Of course, deterrence of others is also a very important
5 consideration. The threat not only of prosecution itself, but
6 resulting damage to reputation, large bills from lawyers, and the
7 anxiety of facing justice before a judge means that the fact of
8 these prosecutions alone will likely have a significant deterrent
9 effect. Potential polluters should take note of what happens
10 even when you just turn a blind eye to environmental problems,
11 not to mention polluting intentionally. Thus, the efforts of the
12 Government and the investigative agencies in these cases have
13 already created a deterrent to this sort of conduct.

14 Now, I do note your cooperation, which Mr. Wright has
15 indicated was perhaps the most significant cooperation in the
16 entire case. The -- I can't underscore the importance of sending
17 a deterrent message to those who are involved in industries that
18 handle chemicals like this that they need to follow the permits
19 and they need to make sure that their facilities are safe, not
20 only for their workers, but also for the environment.

21 Now, there are two major factors that make your case
22 different from the other defendants. First of all, after
23 considering and debating your role in this incident and in
24 Freedom, I've concluded that you're probably the least culpable
25 defendant of all. The Government may not agree with that, but

1 that's my determination.

2 There's no dispute that you tried to get the containment
3 dike wall fixed and the higher-ups in the company wouldn't
4 approve the dollars for it. The problem with that was you went
5 about it the wrong way. You should have followed the permit and
6 you should have ensured that the Stormwater Pollution Prevention
7 Plan and Groundwater Pollution Plan were in place, that there
8 were inspections, that there was some training, that there was a
9 committee, and done all you could through that process to try to
10 get -- to try to get these things fixed and to generate the
11 documentation that would support that effort and that would have
12 made a stronger case for you to make to the owners to fix the
13 walls, maybe an overwhelming case, and, certainly, as I
14 indicated, would have made it much less likely that this would
15 have happened, but I do note the fact that you at least tried to
16 get some of these repairs done.

17 The second thing that makes your case different from all the
18 others is that you are not a wealthy person. At this point, you
19 are a 61-year-old out-of-work engineer who worked for Freedom
20 Industries. That can't help. But, frankly, the bigger problem
21 is that being out of work at your age, in this state, at this
22 time, when most of your experience is with the coal industry and
23 allied industries, is a tough situation, and that's in addition
24 to having some medical issues.

25 You don't have a large net worth, nearly as large a net

1 worth as any of the other defendants. You have some modest
2 retirement savings, but it looks to me from your financial
3 profile, like you are -- you have a negative monthly cash flow
4 which probably has you eating into your retirement savings, so
5 that makes you different from the other defendants in these cases
6 to me, as well.

7 I know you have a college degree and you've had some pretty
8 good engineering jobs at times, but it seems to me that your
9 collar is a just little bit bluer. So, based on all of those
10 considerations, it is the judgment of this Court that you be
11 sentenced to 3 years of probation.

12 While on probation, you must not commit another federal,
13 state or local crime; you must not unlawfully possess a
14 controlled substance; and you must also comply with the standard
15 terms and conditions of probation as recommended by the U. S.
16 Sentencing Commission and as adopted by this Court, including the
17 -- except that you need not participate in a program of testing,
18 counseling and treatment for drug and alcohol abuse, as that does
19 not appear to be implicated in your case.

20 You must also abide by the special conditions of probation
21 as set forth in the local rules of this Court.

22 I am going to impose a fine of \$2,500.00, which is the
23 statutory minimum. In connection with that, I will add the
24 following special conditions of probation:

25 That you shall be required to provide the Probation Office

1 access to any requested financial information; and that you shall
2 pay all monies received from income tax refunds, lottery
3 winnings, judgments, and any other anticipated or unanticipated
4 financial gains to the fine obligation.

5 I will make that fine due immediately, but we can talk in a
6 moment about whether or not we need to put that on a schedule.
7 I'm not going to impose interest on the fine. And I note that
8 you've already paid the special assessment, so you may be seated.

9 Ms. Robinson, does the defendant wish a payment schedule for
10 the fine or does he want to make a lump sum payment?

11 MS. ROBINSON: He would like to have a payment schedule
12 for the fine, Your Honor, and I would also ask the Court consider
13 dispensing with the term of probation that would require him to
14 have drug testing under the Court and --

15 THE COURT: I did not impose that.

16 MS. ROBINSON: Okay.

17 THE COURT: Well, it's -- it is a mandatory condition
18 by local rule, but it's at the discretion of the probation
19 officer, and I assume that when I don't impose it as a
20 discretionary term, they know we don't need it in this case.

21 MS. ROBINSON: Thank you, Your Honor.

22 THE COURT: So, I'm not imposing drug testing.

23 What fine schedule, payment schedule, do you propose?

24 MS. ROBINSON: Your Honor, I think if you could impose
25 \$75.00 a month; if, at some point he can pay it off earlier, then

1 he would -- under the three-year term of probation, he would do
2 that, but with the \$75.00 a month, I believe by the end of the
3 term of probation, he would be able to fully satisfy the entire
4 amount of the fine.

5 THE COURT: Is there any objection to that?

6 MR. WRIGHT: No, Your Honor.

7 THE COURT: Well, if there's no objection, I will allow
8 the defendant -- I'll make it due immediately, but I will allow
9 the defendant to pay -- make monthly payments of \$75.00 a month
10 and that will be a condition of probation.

11 All right. Mr. Burdette, I note that there is a significant
12 appeal waiver contained in your plea agreement. As qualified by
13 that waiver, you have the right to appeal the judgment of this
14 Court. Any Notice of Appeal must be filed with the Clerk not
15 more than 14 days from the date of the entry of the judgment
16 order.

17 If you desire counsel on appeal and you are not able to
18 retain counsel, the appropriate Court will review a financial
19 affidavit filed by you to determine whether or not to appoint
20 counsel.

21 Do you understand your right to appeal and the 14-day filing
22 requirement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I will place the Presentence Report under
25 seal subject to counsel's right to unseal as necessary for

1 appeal.

2 Any other matters we need to take up in this case?

3 MR. WRIGHT: No, Your Honor.

4 MS. ROBINSON: No, Your Honor. Thank you.

5 THE COURT: All right. Thank you.

6 (Proceedings concluded at 3:18 p.m., February 4, 2016.)

7
8 CERTIFICATION:

9 I, Ayme A. Cochran, Official Court Reporter, certify that
10 the foregoing is a correct transcript from the record of
11 proceedings in the matter of United States of America, Plaintiff
12 v. Michael E. Burdette, Defendant, Criminal Action No.
13 2:14-cr-00276-1, as reported on February 4, 2016.

14
15 s/Ayme A. Cochran, RMR, CRR

April 5, 2016

16 Ayme A. Cochran, RMR, CRR

DATE